

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LURAY ROBINSON,)
) No. 644, 2009
Defendant Below,)
Appellant,) Court Below: Superior Court
) of the State of Delaware
v.) in and for New Castle County
)
STATE OF DELAWARE,) Cr. ID No. 0811019231
)
Plaintiff Below,)
Appellee.)

Submitted: March 10, 2010

Decided: March 25, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 25th day of March 2010, it appears to the Court that:

(1) In this appeal from the Superior Court, Luray Robinson appeals the sentence that the trial judge imposed following her conviction for violating her probation. Robinson argues that the trial judge erred by sentencing her without crediting her for time served before the disposition of the offense. Because we find merit to Robinson's argument, we **REMAND** this case to the Superior Court with instructions to amend the sentence order to give Robinson credit for the 242 days she served at Level V.

(2) Robinson was arrested on November 27, 2008, and charged with Assault in the Second Degree and Possession of a Deadly Weapon During the

Commission of a felony. Robinson remained in custody in lieu of bail until she pled guilty to Assault in the Third Degree at a final case review on June 1, 2009. The trial judge sentenced Robinson to one year at Level V incarceration, suspended for Level III probation. The trial judge made the sentence effective on November 27, 2008 to give Robinson credit for the 186 days she served between her arrest and her guilty plea. The trial judge also ordered Robinson to undergo a mental health and substance abuse evaluation.

(3) On August 20, 2009, Robinson's probation officer charged her with violating her probation because Robinson failed to undergo a mental health evaluation. At the violation of probation hearing, the trial judge concluded that Robinson violated her probation and imposed a sentence of one year at Level V, but agreed to review the sentence upon Robinson's completion of a mental health evaluation. The trial judge did not give Robinson credit for the 186 days she served at Level V before her guilty plea.

(4) On October 21, 2009, the trial judge modified Robinson's sentence so that Robinson would serve one year at Level V, suspended for one year at Level IV, but with a hold at Level V until space became available at Level IV. The trial judge's modified sentence order did not give Robinson credit for the 186 days she served at Level V before her guilty plea. This appeal followed.

(7) Robinson argues that, when sentencing her for a violation of probation, the trial judge erred by not crediting her for the 186 days she served at Level V between her arrest and her guilty plea. Because Robinson failed to raise the issue below, we review the trial judge’s decision for plain error.¹ “[T]he doctrine of plain error is limited to material defects which are apparent on the face of the record, which are basic, serious, and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.”²

(8) If a violation of probation is established, the trial judge “may continue or revoke the probation or suspension of a sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.”³ The trial judge may not, however, impose a sentence greater than

¹ *Czech v. State*, 945 A.2d 1088, 1097 (Del. 2008).

² *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986); *see also Baker v. State*, 906 A.2d 139, 150 (Del. 2006) (quoting *Wainwright*, 504 A.2d at 1100).

³ 11 *Del. C.* § 4334(c).

that originally imposed.⁴ In imposing a sentence for a violation of probation, the trial judge must credit a defendant with all Level V time previously served.⁵

(9) Robinson and the State both agree that she was sentenced for violating her probation without receiving credit for the time she served at Level V. Robinson served 186 days at Level V between her arrest and her guilty plea. Robinson also served 56 days at Level V between her violation of probation hearing on September 30, 2009 and her ultimate release on November 25, 2009. The trial judge's failure to credit Robinson with the 242 days she served at Level V effectively imposed a sentence on Robinson that was greater than that originally imposed. The trial judge's failure to credit Robinson for the 242 days she served at Level V constitutes plain error.

NOW, THEREFORE, IT IS ORDERED that this case is **REMANDED** to the Superior Court with instructions to amend the sentence to give credit to Luray Robinson for the 242 days previously served at Level V.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁴ *Ingram v. State*, 567 A.2d 868, 869 (Del. 1989) (“The implementation of probation must be in accordance with statutory powers, and [11 *Del. C.* § 4334(c)] does not grant the authority to the resentencing court, upon a violation of probation, to enlarge a period of probation once imposed.”).

⁵ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).